SPIEGEL & MCDIARMID LLP

GEORGE SPIEGEL (1919-1997)
JAMES N. HORWOOD
THOMAS C. TRAUGER
CYNTHIA S. BOGORAD
SCOTT H. STRAUSS
LISA G. DOWDEN
PETER J. HOPKINS
DAVID E. POMPER
WILLIAM S. HUANG
PABLO O. NÜESCH
TILLMAN L. LAY
STEPHEN C. PEARSON

SENIOR COUNSEL
ROBERT C. McDIARMID
ROBERT A. JABLON

1875 EYE STREET, NW
SUITE 700
WASHINGTON, DC 20006

WWW.SPIEGELMCD.COM

Telephone 202.879.4000
Facsimile 202.393.2866
EMAIL INFO@SPIEGELMCD.COM

Direct Dial 202.879.4022
EMAIL TIM.LAY@SPIEGELMCD.COM

ASSOCIATES
REBECCA J. BALDWIN
KATHARINE M. MAPES
MELISSA E. BIRCHARD
ANJALI G. PATEL
JESSICA R. BELL
LATIF M. NURANI
FRANCES J. WADE*
*MASSACHUSETTS BAR ONLY

OF COUNSEL
DANIEL I. DAVIDSON
FRANCES E. FRANCIS
MARGARET A. McGOLDRICK
JEFFREY A. SCHWARZ

February 24, 2015

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: ***Applications of Comcast Corporation, Time Warner Cable, Inc., Charter Communications, Inc., and GreatLand To Assign and Transfer Control of FCC Licenses and Other Authorizations,* MB Docket No. 14-57**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, this *ex parte* notice is filed on behalf of the Alliance for Community Media ("ACM"). On February 23, 2015, Michael S. Wassenaar, President of ACM, James Horwood of Spiegel & McDiarmid and ACM board member, and the undersigned counsel for ACM met with the following Commission staff members to discuss issues in the above-referenced proceeding: Elizabeth Cuttner of the Office of General Counsel, Adam Lazeros of the Office of the General Counsel, Keith Ingram of the Office of General Counsel, Jaime Douglas of the Office of General Counsel, Amanda Burkett of the Office of General Counsel, William Freedman of the Office of General Counsel, Jake Riehm of the Media Bureau, Marcia Glauberman of the Media Bureau, Joel Rabinovitz of the Office of General Counsel, Allen Barna of the Wireless Telecommunications Bureau, Hillary Burchuk of the Office of General Counsel, William Dever of the Wireline Competition Bureau, Hillary DeNigro of the Media Bureau, Alan Copeland of the Media Bureau, and Jim Bird of the Office of General Counsel.

We discussed the issues raised in ACM's Comments and Reply Comments filed in MB Docket No. 14-57. We also discussed the issues set forth in the attached written handout, which was distributed and discussed at the meeting.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

Tillman L. Lay

Counsel for the Alliance for Community Media

TLL:vev
Attachment

cc:	Elizabeth Cuttner	(elizabeth.cuttner@fcc.gov)
	Adam Lazeros	(adam.lazeros@fcc.gov)
	Keith Ingram	(keith.ingram@fcc.gov)
	Jaime Douglas	(jaime.douglas@fcc.gov)
	Amanda Burkett	(amanda.burkett@fcc.gov)
	William Freedman	(william.freedman@fcc.gov)
	Jake Riehm	(jake.riehm@fcc.gov)
	Marcia Glauberman	(marcia.glauberman@fcc.gov)
	Joel Rabinovitz	(joel.rabinovitz@fcc.gov)
	Allen Barna	(allen.barna@fcc.gov)
	Hillary Burchuk	(hillary.burchuk@fcc.gov)
	William Dever	(william.dever@fcc.gov)
	Hillary DeNigro	(hillary.denigro@fcc.gov)
	Alan Copeland	(alan.copeland@fcc.gov)
	Jim Bird	(jim.bird@fcc.gov)

ALLIANCE FOR COMMUNITY MEDIA
EX PARTE PRESENTATION
IN FCC DN 14-57

I. The transactions, if approved as requested, would pose a threat to independent programming and content and, in particular, to local public, educational and governmental (PEG) programming.

- A. The transactions would significantly increase nationwide cable market concentration.
- B. Comcast's ownership of the NBC broadcasting network and NBC's large cable programming content library creates incentives to engage in practices that would reduce PEG access support and viewership.
  1. Practices that would reduce PEG access financial support and viewership would hold the potential for freeing up system capacity for cable operator's preferred uses:
     - a. commercial programming owned by or affiliated with the operator.
     - b. unaffiliated commercial programming from which the operator derives advertising revenue.
     - c. additional broadband capacity.
  2. Diminishing PEG channel capacity, functionality, financial support and viewer accessibility, and thus viewership, would damage PEG as a local programming alternative to Comcast's NBC owned-and-operated stations and its other local NBC broadcast affiliate partners.
- C. Comcast's argument that the transactions would benefit PEG access by extending the PEG-related *Comcast-NBCU* conditions to the TWC systems Comcast would acquire is flawed.
  1. The *Comcast-NBCU* conditions are themselves inadequate to protect PEG access against Comcast's incentive to discriminate against PEG.
  2. Whatever benefit those conditions might have would be lost to the subscribers in the systems that Comcast is spinning off unless the Commission orders those conditions extended to the Charter/GreatLand systems.

II. If the Commission grants consent to the transactions, it should impose the following PEG-related conditions to any consent:

- A. Require Comcast, Charter and GreatLand to make all PEG channels on all of their cable systems universally available on the basic service tier, in the same format as local broadcast channels, unless the local government and PEG access center specifically agree otherwise.
- B. Require that PEG channel positions be protected on all Comcast, Charter and GreatLand systems.

C. Prohibit Comcast, Charter and GreatLand from discriminating against PEG channels, and ensure that PEG channels on all of their systems will have the same features and functionality, and the same signal quality, as that provided to local broadcast channels.

D. Require that all PEG programming is easily accessed on all Comcast, Charter and GreatLand video programming guides and menus, and easily and non-discriminatorily accessible on all Comcast, Charter and GreatLand video programming platforms.

E. Require that, if requested by the local franchising authority or PEG access center and provided to the operator in HD format, PEG channels on any Comcast, Charter and GreatLand systems have the ability to be distributed in HD format on HD tiers.

III. <u>ACM's proposed transaction conditions are directly related to, and designed to ameliorate, the potential harms to PEG access arising from the transactions.</u>

A. The Comcast/TWC Transaction.

1. The Commission recognized in the *Comcast-NBCU* order the unique importance of PEG channels to localism and diversity, and also the need for it to take affirmative steps to ensure that large cable transactions of this nature do not impair PEG's ability to continue to serve these vital public interests: "Congress afforded PEG channels special status in order to promote localism and diversity, and we believe that this transaction requires us to ensure that these objectives are preserved."

2. The Commission recognized that the vertical integration of a large cable operator with a broadcast network, as well as a large inventory of cable programming, creates an inherent risk that the vertically-integrated operator will "discriminat[e] in the delivery of PEG channels." The Commission therefore concluded that a merger condition was necessary to prevent the enlarged Comcast from "discriminat[ing] against PEG [access] with respect to the functionality, signal quality, and features from those of the broadcast stations it carries."

3. Comcast's proposed acquisition of TWC would substantially expand the vertically-integrated Comcast cable footprint from approximately 22 million subscribers to almost 30 million subscribers. The transaction would significantly amplify Comcast's pre-existing incentive to favor its programming, as well as other commercial programming from which it derives revenue, over PEG channels.

4. The transaction would result in Comcast acquiring TWC cable systems in New York City, Los Angeles and Dallas-Fort Worth, each of which is a market with an NBC O&O station. And Comcast will also acquire TWC cable systems in at least five markets (Los Angeles, New York City, Dallas-Fort Worth, Houston and San Antonio) where there is a Comcast/NBC-owned Telemundo O&O station.

5. Comcast/NBC has a vested interest in the viewership success of every NBC and Telemundo network affiliate. The post-transaction Comcast would have a new and greatly expanded incentive and ability to discriminate against PEG access in its newly acquired cable markets.

B. The Comcast/Charter-Midwest Cable Transaction.

1. The Charter/GreatLand portion of the transactions has vertical programming content implications. GreatLand would acquire local programming channels and four regional sports networks. Charter concedes that "individuals with interests in Charter also have interests in programming assets." This indirect common ownership between Charter and cable programmers creates vertical incentives for Charter to discriminate against PEG.

2. Charter and GreatLand will have a new and much closer relationship with Comcast—and thus Comcast's huge broadcast network and cable programming content holdings—as a result of the transactions.

    a. Liberty Media owns programming content interests and will own a controlling interest in Charter.

    b. For a period of time after the transactions are consummated, Comcast will continue to have a contractual role with respect to the systems divested to Charter and GreatLand.

3. Discriminating against PEG, and reducing PEG viewership, would be a "win-win" strategy for Charter/GreatLand's (and Comcast's) bottom lines, and a "lose-lose" proposition for the continued viability of PEG access and the unique localism and diversity public interests it serves.

    a. The post-transaction Charter/GreatLand would earn revenue from advertising on all commercial cable programming channels on its systems, and the greater the viewership of those channels, the higher the advertising revenues.

    b. By discriminating against PEG and thereby reducing PEG viewership, the post-transaction Charter/GreatLand could point to reduced PEG viewership to undermine any attempt by a local franchising authority to justify PEG-related needs in franchise renewals.

4. If the *Comcast-NBCU* Order conditions are not applied to the cable systems divested to Charter/GreatLand as a result of the transactions, the 6 million subscribers served by those systems, which currently are subject (or, in the case of the TWC systems, would become subject) to the PEG-related *Comcast-NBCU* Order conditions would lose that benefit as a result of the transactions.